before the Court, as they were in that case, it is inevitable there should be not one, but several, references to the Arabic will as well as to the English will in a judgment dealing with a point of construction. I reach the conclusion, therefore, that the Arabic will was not before the Court in the proceedings which took place in February 1942.

The only remaining question to be decided is whether it was relevant for the Arabic will to be before the Court in the 1942 proceedings. This can be dealt with very shortly. In the case of *Syed Ali v. Syed Omar, supra,* Woodward J. said: ".....the first question which arises is one of construction. What is the meaning of the words the testator has used? Besides the English will there was also a will in Arabic executed a few days earlier, and admitted to probate with the English will. Both wills must be read together to discover the testator's intention." So also the question raised in the 1942 proceedings was one of construction, and therefore both wills should have been read together to discover the testator's intention.

Accordingly, I am of the opinion that the judgment of the 12th February, 1942 should be set aside and that one half of the share of the income of this estate formerly paid to Shariffa Bahia should be distributed to the children of her deceased son, and one quarter to the children of each of her deceased daughters. Consequential upon this judgment it will be necessary to adjust the accounts for some years back but counsel for the plaintiffs stated that his clients will be content if the adjustment begins with the accounts of the 24th December, 1946 and I therefore make an order limiting the adjustment in the manner proposed by the plaintiffs.

*Order accordingly.*

Solicitors: *Mallal & Namazie; Donaldson & Burkinshaw; Rodyk & Davidson.*

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## CHINESE TIN MINES REHABILITATION LOANS BOARD v. CHEE HOI VOON

**[O.C.J. (Syed Sheh Barakbah J.) August 8, 1958]**

**[Ipoh — Civil Suit No. 239 of 1957]**

*Practice and Procedure — Judgment — Former judgment unsatisfied — Second action on the same cause of action — Res judicata — Distinction between judgment de bonis propriis and de bonis testatoris.*

Judgment having been obtained against an administrator of an estate *de bonis propriis* on a loan made to him in his representative capacity, a second action does not lie against him in his personal capacity for the balance due on the unsatisfied judgment or on the former cause of action. The previous judgment is still outstanding and the proper remedy is to execute the judgment.

**[Editorial Note:** See also *Farhall v. Farhall* (1871), 7 Ch.App. 123.]

*Case referred to:—*

(1) *Savena Supramaniam Pillay v. Tan Kah Chiat administrator of Tan Kong Liang decd.,* (1934) M.L.J. 133.

ACTION for balance due on unsatisfied Judgment.

*S. B. Coates* for the plaintiff.

*F. C. Arulanandom* for the defendant.

*Cur. Adv. Vult.*

**Syed Sheh Barakbah J.:** — This is an action by the plaintiff against the defendant claiming $22,467.35, interest and costs.

The defendant is the son and Administrator of the Estate of Chee Piang Thong. The estate consisted of a tin mine bearing the name of Liang Toong Kongsi. In 1948 the plaintiff made advances to the defendant in his capacity as Administrator of the said Estate, totalling $56,650, for the purpose of rehabilitating the said Kongsi, and as security therefor the defendant, as Administrator, executed a Bill of Sale in favour of the plaintiff over the mining engine and equipment at the said mine. The defendant failed to make adequate repayments of the loan balance to the plaintiff and on 3rd July, 1954, judgment was entered against the defendant in Civil Suit No. 141 of 1954 for $28,594.71, interest and costs, together with an order for the sale of the mining engine and equipment mentioned in the said Bill of Sale. After the sale there still remained a substantial sum owing to the plaintiff, who notified the defendant that they intended to proceed to attach the defendant's personal property at Hoi Voon Kongsi, Tronoh. The defendant thereupon wrote to the plaintiff's solicitors on 27th June, 1956, offering to settle the loan balance outstanding by allowing the Straits Trading Co. Ltd., Kampar, to deduct 5% from all sales of tin-ore produced by the said Hoi Voon Kongsi and authorising the said company to pay such sums deducted to the plaintiff. The defendant in the said letter further gave an undertaking that he should be held personally responsible for the loan balance. Ex.P.3 is the

letter. As a token of good faith the defendant also paid $500 to the plaintiff, vide paragraph 5 of Ex.P.3.

No payments having been received from the defendant or from the Straits Trading Co. Ltd. since October, 1956, the plaintiff then filed the present action.

The first point that I have to decide is whether the matter is *res judicata* or not. Upon a perusal of the file in Civil Suit No.141 of 1954, I discovered that the Summons in Chambers dated the 26th day of June, 1954, was headed:—

"Civil Suit No. 141 of 1954

Between The Chinese Tin Mines Rehabilitation Loans Board, *plaintiff* and Chee Hoi Voon, Administrator of the Estate of Chee Piang Thong, deceased of 46 Cockman Street, Ipoh, *defendant*."

but the prayer was "for an Order that Judgment in default of filing the written statement of defence be entered in this suit against the defendant in terms of the prayers of the Plaint filed herein and costs."

The Order of Court drawn up also had the same heading as the Summons in Chambers referred to above, but the body of the Order contained the following:—

"ORDER.

Upon reading the summons for Judgment dated the 26th day of June, 1954 and the affidavit of R. Letchmanan dated the 25th day of June, 1954 and the Plaint filed herein and upon hearing Mr. S. B. Coates of Counsel for the plaintiff and in the absence of Mr. M. S. Mahendran, Counsel for the defendant.

*It is adjudged* that the plaintiff recover against the defendant the sum of $28,594.71 with interest thereon at 6 per cent per annum from the 26th of April, 1954 to date of satisfaction....."

Now, where it is desired to enter judgment against an Executor or Administrator in his representative capacity, a particular form should be adopted. It is to be found on page 2318 of Volume I of the *Annual Practice* 1958 — Form No. 4B — which is as follows:—

"No. 4B

Judgment against Executor by Order

(Heading as in Form 1)

The day of , 19

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of , 19 , obtained leave to sign judgment against the defendant as (executor or administrator) for , and costs to be taxed.

It is this day adjudged....."

It will be seen that the judgment in Civil Suit No.141 of 1954 dated the 3rd July, 1954, was not drawn up in conformity with the form above, the words "as administrator" after the word "defendant" not having been inserted, and, therefore, in my opinion, that judgment was one against the defendant in his personal capacity. My view is further fortified by the Singapore Court of Appeal case of *Savena Supramaniam Pillay v. Tan Kah Chiat administrator of Tan Kong Liang deceased*,[1] the head-note of which reads as follows:—

"When an action is brought against an administrator and Judgment is entered against the defendant *simpliciter*, this is a judgment *de bonis propriis* and does not entitle the Judgment Creditor to obtain satisfaction out of the assets of the deceased....."

Huggard, C.J., at page 135, stated *inter alia*:—

"Where it is desired to enter Judgment against an executor or administrator in his representative capacity a particular form should be adopted. This form is to be found in the Annual Practice and is in fact the form into which the Judgment in the present case was amended in 1931 on the *ex parte* application of the present appellant. Judgment was not, however, originally entered in that form in 1921 but as follows:—

'The defendant.....not having appeared to Writ of Summons herein, final Judgment is hereby entered for the plaintiff against the said defendant.....for $5,300.03 and $61.08 for costs.'

In my view this is nothing more than a personal Judgment against the defendant."

Since judgment has already been obtained against the defendant personally in Civil Suit No.141 of 1954, in my opinion, the present suit which arises out of the same matter, is *res judicata* and is therefore not maintainable. Having come to this conclusion, I do not consider it necessary to deal with the other points raised in the Statement of Defence. I accordingly make an Order that the claim be dismissed with costs.

*Claim dismissed.*

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Braddell & Ramani.*